

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2482 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

PANCHALIBEN WD/O. SUNIL @ CHIKUBHAI VASUDEV MADRASI

Versus

COMMISSIONER OF POLICE SURAT

Appearance:

MR SUNIL C PATEL for Petitioner
MR. D.P. JOSHI, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 14/12/1999

ORAL JUDGEMENT

The Commissioner of Police, Surat City, Surat, ordered detention of the petitioner under the provisions of the Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the PASA Act') in exercise of power under Section 3(1) of the PASA Act on 18.3.1999. The grounds of detention indicate that the detaining authority took into consideration two prohibition cases registered against the petitioner as

well as statements of two anonymous witnesses. Anonymity of these two witnesses were maintained by the detaining authority in exercise of powers under Section 9(2) of the PASA Act on the ground that the authority was subjectively satisfied about the correctness of the facts stated in these statements and the genuineness of the fear expressed by the witnesses qua the petitioner in respect of person and property of the witnesses. The authority also recorded subjective satisfaction about the fact that it is not possible to resort to less drastic remedy as the petitioner is required to be detained from immediately preventing her from pursuing her illegal activities and to serve this purpose detention under the PASA Act was the only remedy that should be resorted to.

2. The petitioner challenges the order of detention in this petition under Article 226 of the Constitution of India. The main grounds raised for assailing the order of detention is that the detenu hails from Tamil Nadu and does not know Gujarati or Hindi language. A representation was made demanding translated version of the paper book which has not been considered by the authority concerned and therefore there is infringement of the right of the detenu guaranteed under Article 22(5) of the Constitution of India.

3. Mr. S.C. Patel, learned advocate appearing for the petitioner submitted that the representation was made on 3.8.1999 and sent to the detaining authority on 4.8.1999 demanding translated version. It has not been considered at all by the Government or by the detaining authority. The petitioner therefore could not make an effective representation and therefore continued detention is bad.

4. Mr. D.P. Joshi, learned A.G.P. for the respondents submitted that the representation dated 3.8.1999 was received through the detaining authority by the Government and the Government by letter dated 7.8.1999 instructed the detaining authority to do the needful in the matter. However, the request does not appear to have been complied with from the file produced before him.

5. From the rival contentions it is clear that undisputedly the petitioner is from Tamil Nadu. She made a request for translated version of the paper book by representation 3.8.1999. Upon the said representation, the Government directed the detaining authority to do the needful. The authority, therefore, ought to have supplied the translated version of the documents to the

petitioner or if, according to him, the detenu was not entitled to it, the detenu ought to have been informed of rejecting the request which could not have been made by the detaining authority as approval was already given by the Government and thereafter the Government had directed the detaining authority to do the needful. In this view of the matter, the petitioner is not supplied with the translated version of the paper book into the language known by the petitioner. She was, therefore, not able to make an effective representation which has resulted into infringement of the constitutional right. The continued detention is therefore bad. The petition therefore deserves to be allowed on this ground.

6. The petition is allowed. The order of detention dated 18.3.1999 passed by the Police Commissioner, Surat City, is quashed and set aside. The detenu be set at liberty forthwith if not required in any other case. Rule is made absolute. No order as to costs.

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